



United States District Court, W.D. Virginia,
Big Stone Gap Division.
Danny RIDINGS, Plaintiff,

v.

Kenneth S. APFEL, Commissioner of Social Security, Defendant.

No. 2:98CV00126.

Nov. 16, 1999.

Claimant sought review of decision denying his application for social security disability insurance benefits (DIB) and supplemental security income (SSI) benefits. The District Court, Jones, J., held that finding that claimant did not have a severe physical impairment was not supported by substantial evidence.

Reversed and remanded.

West Headnotes

[1] Social Security and Public Welfare 356A 148.15

356A Social Security and Public Welfare
356AII Federal Insurance Benefits in General
356AII(C) Procedure
356AII(C)3 Judicial Review
356Ak148 Questions of Law and Fact
356Ak148.15 k. Disability in General. Most Cited Cases
District Court must uphold the factual findings and final decision of the Commissioner of Social Security Administration regarding disability insurance benefits (DIB) and supplemental security income (SSI) benefits if they are supported by substantial evidence and were reached through application of the correct legal standard. 28 U.S.C.A. § 636(b)(1)(C); Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).

[2] Administrative Law and Procedure 15A

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15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of
15Ak784 Fact Questions

15Ak791 k. Substantial Evidence.

Most Cited Cases

“Substantial evidence” is evidence which a reasonable mind would accept as sufficient to support a particular conclusion; it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

[3] Social Security and Public Welfare 356A 8.15

356A Social Security and Public Welfare

356AI In General

356Ak8 Administrative Proceedings

356Ak8.15 k. Determination; Administrative Review. Most Cited Cases

There is no requirement that social security claimant seeking to present new evidence to the Appeals Council show “good cause” for consideration of such new evidence; thus, claimant need not explain why the relevant evidence was not presented to the administrative law judge (ALJ). 20 C.F.R. § 404.970(b).

[4] Social Security and Public Welfare 356A 8.20

356A Social Security and Public Welfare

356AI In General

356Ak8 Administrative Proceedings

356Ak8.20 k. Judicial Review. Most Cited Cases

In reviewing a social security benefits case in which new evidence was considered by the Appeals Council, and review was denied, District Court must likewise consider the record as a whole, including the new evidence, to determine whether

substantial evidence supports the administrative law judge's (ALJ) decision. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g); 20 C.F.R. §§ 404.970(b), 404.979.

[5] Social Security and Public Welfare 356A
⚡142.5

356A Social Security and Public Welfare
356AII Federal Insurance Benefits in General
356AII(C) Procedure
356AII(C)1 Proceedings in General
356Ak142.5 k. Hearing and Administrative Review. Most Cited Cases
Appeals Council is not required to give detailed assessment of its failure to grant review of a claim for supplemental security income (SSI) benefits or disability insurance benefits (DIB) in the face of new evidence. 20 C.F.R. § 404.970(b).

[6] Social Security and Public Welfare 356A
⚡143.60

356A Social Security and Public Welfare
356AII Federal Insurance Benefits in General
356AII(C) Procedure
356AII(C)2 Evidence
356Ak143.30 Disability Claims, Evidence as to

356Ak143.60 k. Nature and Duration of Impairment, Sufficiency. Most Cited Cases
Finding that social security disability insurance benefits (DIB) and supplemental security income (SSI) benefits claimant with low back pain did not have a severe physical impairment was not supported by substantial evidence; although treating orthopedist reported that claimant could continue to drive a truck, examining physician found disc herniation with fragmentation and advised claimant not to engage in bending forward, pushing, pulling, or lifting. Social Security Act, § 205(g), 42 U.S.C.A. § 405(g).

***707** Donald E. Earls, Norton, VA, for Plaintiff.
Julie C. Dudley, U.S. Atty.'s Office, Roanoke, VA, for Defendant.

***708 OPINION**

JONES, District Judge.

In this social security case, I accept the recommendation of the magistrate judge and remand the case for further administrative proceedings.

I. Introduction.

Danny Ridings challenges the final decision of the Commissioner of Social Security ("Commissioner") denying his claims for a period of disability, disability insurance benefits ("DIB"), and supplemental social security ("SSI") benefits under certain provisions of the Social Security Act ("Act"). See 42 U.S.C.A. § 416(i) (West Supp.1999); 42 U.S.C.A. § 423 (West Supp.1999); 42 U.S.C.A. § 1381a (West Supp.1999). This court has jurisdiction under 42 U.S.C.A. § 405(g) (West 1991) and 42 U.S.C.A. § 1383(c)(3) (West Supp.1999). The action was referred to United States Magistrate Judge Pamela Meade Sargent to conduct appropriate proceedings.

See 28 U.S.C.A. § 636(b)(1)(B) (West 1993); Fed.R.Civ.P. 72(b). Magistrate Judge Sargent filed her report on September 28, 1999. On October 14, 1999, the Commissioner filed written objections to the report.

II. Standard of Review.

[1][2] I must make a de novo determination of those portions of the report to which the Commissioner objects. See 28 U.S.C.A. § 636(b)(1)(C); Fed.R.Civ.P. 72(b). Under the Act, I must uphold the factual findings and final decision of the Commissioner if they are supported by substantial evidence and were reached through application of the correct legal standard. See *Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir.1987). Substantial evidence is "evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir.1966).

III. Objections to Magistrate Judge's Report.

Ridings contended in his applications for DIB and SSI that he had been disabled since 1995, due to low back pain and a mine injury.^{FN1} A hearing before an administrative law judge ("ALJ") was held on March 21, 1997, at which Ridings did not appear but was represented by counsel.^{FN2} By a decision issued June 2, 1997, the ALJ found that Ridings did not have a severe impairment that significantly affected his ability to work, and thus he was not disabled within the meaning of the Act.

FN1. Ridings had previously received DIB due to a back impairment from 1985 until 1993 but had returned to work as a truck driver in 1992.

FN2. According to the ALJ, Ridings later said he had forgotten about it. (R. at 18.)

Ridings sought administrative review by the Social Security Administration's Appeals Council, and his attorney submitted to the Appeals Council a report dated August 21, 1997, from Nabil Ahmad, M.D., of the Scott County Rural Health Clinic, concerning Ridings' back problems. Thereafter, the Appeals Council issued a decision^{FN3} in which it acknowledged consideration of Dr. Ahmad's report and letters from Ridings' attorney, but concluded that "neither the contentions nor the additional evidence provides a basis for changing the [ALJ's] decision." (R. at 10.) This suit followed.

FN3. The Appeals Council's decision is undated.

The magistrate judge found that substantial evidence did not exist in the record to support the finding that Ridings did not suffer from a severe physical impairment. The magistrate judge also held that it was error for the Appeals Council to fail to provide any rationale for its decision that Dr. Ahmad's report provided no basis for changing the ALJ's decision.^{FN4}

FN4. The ALJ found that Ridings did not

suffer from a severe mental impairment and the magistrate judge found this determination to be based on substantial evidence. The plaintiff has not objected to that finding by the magistrate judge and it is not at issue.

***709** The Commissioner contends that the Appeals Council is not required to state a rationale for its determination to deny review of an ALJ's decision and thus the magistrate judge's report should be rejected.

[3] The applicable regulations provide for Appeals Council review of ALJ decisions in social security disability cases. *See* 20 C.F.R. § 404.970 (1999). In particular, the Appeals Council must consider "new and material evidence" presented after the ALJ's decision, "where it relates to the period on or before the date of the [ALJ's] decision." 20 C.F.R. § 404.970(b). There is no "good cause" requirement for consideration of such new evidence. Thus, as in this case, a claimant need not explain why the relevant evidence was not presented to the ALJ. *See Wilkins v. Secretary, Dep't of Health & Human Serv.*, 953 F.2d 93, 96 n. 3 (4th Cir.1991) (en banc).

If qualifying new evidence is presented, the Appeals Council must evaluate the entire record, including the new evidence. If it finds that the ALJ's decision is contrary to the weight of the evidence currently of record, it will then review the ALJ's decision. The Appeals Council may thereafter adopt, modify or reverse the ALJ's decision, or it may remand the case to the ALJ. *See* 20 C.F.R. §§ 404.970(b), 979 (1999).

[4] In reviewing a case like the present one in which new evidence was considered by the Appeals Council, and review was denied, this court must likewise consider the record as a whole, including the new evidence, to determine whether substantial evidence supports the ALJ's decision. *See Wilkins*, 953 F.2d at 96.

This task is a difficult one, since in essence the

court must review the ALJ's decision-deemed the final decision of the Commissioner-in the light of evidence which the ALJ never considered, and thus never evaluated or explained. As Judge Posner of the Seventh Circuit has cogently pointed out, this is contrary to the normal principles of appellate review. See *Eads v. Secretary of Dep't of Health & Human Serv.*, 983 F.2d 815, 817 (7th Cir.1993).FN5 The Fourth Circuit, however, has squarely required this process and I am bound by its precedent.

FN5. The Seventh Circuit has rejected the notion that the court should consider the merits in light of the new evidence where the Appeals Council has denied review. Instead, the court reviews only the decision to deny review and may remand the case to the Appeals Council. See *Eads*, 983 F.2d at 817-18.

[5] As the Commissioner correctly states, the Appeals Council is not expressly required by the regulations to state its rationale for denying review. See 20 C.F.R. § 404.970(b). It is the ALJ's decision that the court must review, in light of the new evidence, and not that of the Appeals Council. Accordingly, I disagree with the magistrate judge that the Appeals Council must give a detailed assessment of its failure to grant review in the face of the new evidence. See *Hollar v. Commissioner of Soc. Sec. Admin.*, No. 98-2748, 1999 WL 753999, at *1 (4th Cir. Sept. 23, 1999) (unpublished) (citing *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir.1992)).FN6

FN6. At least one other magistrate judge of this district has held that the Appeals Council must articulate some reason for finding that the new evidence does not justify review. See *Alexander v. Apfel*, 14 F.Supp.2d 839, 843 (W.D.Va.1998) (Conrad, J.).

[6] On the other hand, I agree with the magistrate judge that substantial evidence does not support the ALJ's decision, when reviewed along with Dr.

Ahmad's report.

The evidence before the ALJ concerning Ridings' back problems was, in the words of the magistrate judge, "relatively benign." His treating physician, William A. McIlwain, M.D., an orthopaedist, began treating him on October 25, 1995, for a back injury that allegedly occurred on June 29, 1995, while Ridings was working as a truck driver. In Dr. McIlwain's last report considered by the ALJ, dated March 10, 1997, the physician noted that while Ridings claimed that he had again *710 injured his back while working, "I think that, all in all, he is unchanged from his previous evaluation. I still don't see a reason why he can't drive his truck from any objective standpoint. I note that he hasn't done work hardening and he hasn't had the tests done and I really don't have anything more to offer if he doesn't do those things." (R. at 353.) Dr. McIlwain told Ridings that if he didn't improve he would consider an MRI study^{FN7} and scheduled a follow up appointment. (R. at 354.)

FN7. A magnetic resonance imaging ("MRI") study involves application of the magnetic nuclear resonance imaging technique, a "complex electronic procedure for producing images of internal structures of the body." 4 J.E. Schmidt, *Attorneys' Dictionary of Medicine* N-153 (1999).

Dr. Ahmad's report, however, shows a dramatically different picture. It states that following March 10, 1997, an MRI was performed and Dr. McIlwain found a "disc herniation with fragmentation to the left side with impinging nerve on S1." (R. at 360.) Back surgery was scheduled, but Ridings was unable to go through with it because of a lack of insurance. (*Id.*) Based on this presentation, Dr. Ahmad advised Ridings not to engage in "any activities like bending forward, pushing, pulling or lifting...." (R. at 362.)

Because of this evidence, the magistrate judge was correct in finding that the ALJ's decision that Ridings did not have a severe physical impairment was

not based on substantial evidence. The new evidence clearly calls into doubt any decision grounded on the prior medical reports from Dr. McIlwain and the ALJ's findings that Ridings suffered only from a lumbar strain "without any evidence of neurological involvement," and had no impairment that "significantly limit [ed] his ability to perform basic work-related activities." (R. at 21-22.)^{FN8}

FN8. The Appeals Council was clearly correct in considering Dr. Ahmad's report, since the report described the MRI as having occurred in March of 1997, and thus the new evidence related to the period "on or before the date of the [ALJ's] decision," as required by the new evidence regulation. 20 C.F.R. § 404.970(b). The ALJ's decision was issued on June 2, 1997.

For these reasons, while I agree with the Commissioner that the Appeals Council was not required to state its reasons for finding that the new evidence did not justify review of the ALJ's decision, I find the ALJ's decision is not based on substantial evidence and the case must be remanded for further administrative proceedings.

An appropriate final judgment will be entered.

W.D.Va., 1999.

Ridings v. Apfel

76 F.Supp.2d 707, 66 Soc.Sec.Rep.Serv. 56

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NOTICE: THIS IS AN UNPUBLISHED OPINION. (The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA4 Rule 36 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Fourth Circuit.
Donna E. HOLLAR, Plaintiff-Appellant,
v.

COMMISSIONER OF THE SOCIAL SECURITY
ADMINISTRATION, Defendant-Appellee.
No. 98-2748.

Submitted July 30, 1999.

Decided Sept. 23, 1999.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville, No. CA-96-138-5-V; Richard L. Voorhees, District Judge.

Donna E. Hollar, Appellant Pro Se.
Joseph L. Brinkley, Office Of The United States Attorney, Charlotte, North Carolina, for Appellee.

Before WIDENER and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

OPINION

PER CURIAM.

*1 In this case, the Commissioner of Social Security found that Donna E. Hollar was disabled from December 30, 1990 to June 12, 1992, when her disability ceased. Hollar now appeals the district court's order upholding the Commissioner's decision. We affirm.

Hollar alleged that she became disabled on December 30, 1990 due to complications from an automobile accident. Her application was denied initially and on reconsideration. After the ALJ issued

his decision, Hollar sought review before the Appeals Council. The Appeals Council considered additional evidence submitted by Hollar but found that the evidence did not provide a basis for changing the ALJ's decision. The ALJ's decision therefore became the final decision of the Commissioner.

Hollar then filed the subject action in the district court. *See* 42 U.S.C. § 405(g) (1994). A magistrate judge found that substantial evidence supported the Commissioner's decision. Hollar, through counsel, objected to the magistrate judge's findings. The district court found her objections to be without merit, adopted the recommendation of the magistrate judge, and entered summary judgment for the Commissioner. Hollar timely appeals.

We review the Commissioner's decision to determine whether it is supported by substantial evidence and whether the correct law was applied. *See Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971); *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir.1990). In this case, our review is further restricted to consideration of the two issues that counsel raised in the objections to the magistrate judge's report. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir.1985); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.1984). In her objections, Hollar complained that the Appeals Council failed to consider and make explicit findings concerning the evidence submitted in support of her claim after the ALJ's decision. Second, Hollar contended that the magistrate judge erred in conducting a de novo review of the evidence, including the additional evidence submitted to the Appeals Council.

The Appeals Council in its decision did not engage in extensive analysis of the additional evidence but simply identified the evidence, stated that it had considered the evidence, and concluded that the evidence did "not provide a basis for changing the

Administrative Law Judge's decision." At least one court of appeals has specifically rejected the claim that the Appeals Council must "articulate its own assessment of the additional evidence." *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir.1992). We agree with this conclusion and further note that the regulation addressing additional evidence does not direct that the Appeals Council announce detailed reasons for finding that the evidence did not warrant a change in the ALJ's decision. *See* 20 C.F.R. § 404.970(b) (1999).

*2 In her second objection, Hollar contended that the magistrate judge erroneously engaged in a de novo review of the additional evidence. To the contrary, the magistrate judge correctly analyzed the entire record. He found that substantial evidence supported the Commissioner's decision and that the additional evidence submitted to the Appeals Council did not change his finding. *See Browning*, 958 F.2d at 822-23.

Our review of the record and the district court's opinion adopting the recommendation of the magistrate judge discloses no reversible error. We therefore affirm on the reasoning of the district court. *See Hollar v. Commissioner*, No. CA-96-138-5-V (W.D.N.C. Sept. 18, 1998).^{FN*} We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

FN* Although the district court's judgment or order is marked as "filed" on September 17, 1999, the district court's records show that it was entered on the docket sheet on September 18, 1999. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date that the judgment or order was entered on the docket sheet that we take as the effective date of the district court's decision. *See Wilson v. Murray*, 806 F.2d 1232, 1234-35 (4th Cir.1986).

AFFIRMED

C.A.4 (N.C.), 1999.

Hollar v. Commissioner Of Social Sec. Admin.
194 F.3d 1304, 1999 WL 753999 (C.A.4 (N.C.))

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